



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0580]

RIN 1625-AA87

Security Zones; Naval Base Point Loma; Naval Mine Anti Submarine Warfare Command; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is increasing a portion of an existing San Diego Bay security zone at Naval Base Point Loma to support the construction of a new Naval fuel pier. Concurrent with the construction of the new pier, the Coast Guard is also establishing a new security zone at the Naval Mine and Anti-Submarine Warfare Command to protect the relocated marine mammal program throughout the temporary construction process. The security zone modifications are intended to restrict vessels from portions of the San Diego Bay in order to ensure the safety and security of Naval assets. Both security zones will safeguard Naval assets, such as vessels, property and waterfront facilities from destruction, loss or injury from sabotage or other subversive acts. No persons or vessel may enter or remain in the security zones without permission of the Captain of the Port, the

Commander of Naval Base Point Loma, the Commander of the Naval Mine Anti Submarine Warfare Command, and the Commander of Naval Region Southwest, or a designated representative of those individuals.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0580]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant John Bannon, U.S. Coast Guard Sector San Diego; telephone (619) 278-7261 or by e-mail at [John.E.Bannon@uscg.mil](mailto:John.E.Bannon@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

#### A. Regulatory History and Information

The Coast Guard is issuing this final rule after publishing a Notice of Proposed Rulemaking (NPRM) on August 28, 2013 (78 FR 53109).

The Coast Guard received no comments on that NPRM and as such, no changes have been made to these proposed security zones. The Coast Guard also received no requests for public meeting.

#### B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The U.S. Navy is requesting an extension of the existing security zone for the Naval Base Point Loma Fuel Pier construction and the establishment of a temporary security zone at the Naval Mine and Anti-Submarine Warfare Command to temporarily house the Navy's marine mammal program during the multi-year construction phase of the new fuel pier.

The extended security zone at Naval Base Point Loma will add an additional 500 feet east to provide standoff from the new replacement fuel pier which will place the end of the pier closer to the federal channel in deeper water. The marine mammal pen

security zone will also be established at the Naval Mine and Anti-Submarine Warfare Command to provide a 100 foot standoff for marine mammal pens. The marine mammal pens need to be moved due to the construction activity and noise near their current pens.

Both security zones will safeguard Naval assets, such as vessels and waterfront facilities from destruction, loss or injury from sabotage, or other subversive acts, accidents or other causes of a similar nature and still allow for safe navigation around the security zones. No persons or vessel may enter or remain in the security zones without permission of the Captain of the Port, the Commander of Naval Base Point Loma, The Commander of the Naval Mine Anti Submarine Warfare Command, the Commander of Naval Region Southwest, or a designated representative of those individuals.

#### C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received 0 comments on the NPRM for this rule and as such, no changes have been made to the final rule.

The Coast Guard at the request of the U.S. Navy is extending the existing security zone for the Naval Base Point Loma Fuel Pier and establishing a temporary security zone at the Naval Mine and Anti-Submarine Warfare Command to temporarily house the Navy's marine mammal program during the construction phase of the new fuel pier.

The extended security zone at Naval Base Point Loma will add an additional 500 feet east to provide standoff from the new replacement fuel pier which will exist closer to the federal

channel in deeper water. The marine mammal pen security zone will also be established at the Naval Mine and Anti-Submarine Warfare Command to provide a 100 foot standoff for marine mammal pens. The marine mammal pens need to be moved due to the construction near their current pens. This project has been well advertised in the local community.

Both security zones will safeguard Naval assets, such as vessels and waterfront facilities from destruction, loss or injury from sabotage, or other subversive acts, accidents or other causes of a similar nature and still allow for safe navigation around the security zones. No persons or vessel may enter or remain in the security zones without permission of the Captain of the Port, the Commander of Naval Base Point Loma, The Commander of the Naval Mine Anti Submarine Warfare Command, the Commander of Naval Region Southwest, or a designated representative of those individuals.

The existing Naval Base Point Loma Fuel Pier security zone listed in 33 CFR 165.1102, is being amended to reflect the additional 500 feet of standoff distance adjacent to the fuel pier. The limits of the revised Naval Base Point Loma Fuel Pier security zone are bound by the following coordinates:

32°42'28.8" N, 117°14'13.2" W

32°42'28.8" N, 117°14'12.6" W

32°42'10.2" N, 117°14'03.0" W

32°42'06.2" N, 117°14'01.5" W

32°41'49.5" N, 117°14'07.0" W

32°41'47.4" N, 117°14'11.4" W

32°41'43.8" N, 117°14'12.6" W

32°41'31.8" N, 117°14'13.8" W

32°41'33.0" N, 117°14'01.2" W

32°41'10.2" N, 117°13'57.0" W

32°41'10.2" N, 117°13'58.2" W

The security zone at the Naval Mine and Anti-Submarine Warfare Command will provide for 100 feet of standoff distance. The limits of the new Naval Mine and Anti-Submarine Warfare Command security zone are bound by the following coordinates:

32°43'40.9" N, 117°12'54.9" W

32°43'40.6" N, 117°12'52.3" W

32°43'22.5" N, 117°12'57.8" W

32°43'23.4" N, 117°13'01.3" W

Both security zones safeguard Naval assets, such as vessels and waterfront facilities from destruction, loss or injury from sabotage, other subversive acts, accidents or other causes of a similar nature and still allow for safe navigation around the security zones.

No persons or vessel may enter or remain in the security zones without permission of the Captain of the Port, the

Commander of Naval Base Point Loma, the Commander of the Naval Mine Anti Submarine Warfare Command, the Commander of Naval Region Southwest, or a designated representative of those individuals.

Before the rule becomes effective, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the established and modified Naval security zones.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This determination is based on the size, and location of the security zones. Vessels that may operate for recreational or commercial purposes within the area encompassed by the security

zone expansion and establishment will not be impacted by the proposed regulation. Sufficient navigable water exists adjacent to the security zones and the Federal channel. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in specified portions of San Diego Bay.

(2) These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The security zones will only apply to areas of the bay where vessel traffic is already aware of Naval vessel



traffic and security concerns and sufficient navigable water exists adjacent to the security zones. Vessel traffic can transit safely around the security zones. Information on the security zones will be published in the Coast Guard's Local Notice to Mariners as well as updated on applicable nautical charts.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an

expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

## 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of security zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and

recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.1102 to read as follows:

**§ 165.1102 Security Zone; Naval Base Point Loma; San Diego Bay, CA.**

(a) Location. The following area is a security zone: The water adjacent to the Naval Base Point Loma, San Diego, CA, enclosed by the following coordinates:

32°42'28.8" N, 117°14'13.2" W (Point A)

32°42'28.8" N, 117°14'12.6" W (Point B)

32°42'10.2" N, 117°14'03.0" W (Point C)

32°42'06.2" N, 117°14'01.5" W (Point D)

32°41'49.5" N, 117°14'07.0" W (Point E)

32°41'47.4" N, 117°14'11.4" W (Point F)

32°41'43.8" N, 117°14'12.6" W (Point G)

32°41'31.8" N, 117°14'13.8" W (Point H)

32°41'33.0" N, 117°14'01.2" W (Point I)

32°41'10.2" N, 117°13'57.0" W (Point J)

32°41'10.2" N, 117°13'58.2" W (Point K)

Thence running generally north along the shoreline to Point A.

(b) Regulations. (1) The general regulations governing security zones found in 33 CFR 165.33 apply to the security zone described in paragraph (a) of this section.

(2) Entry into, or remaining in, the areas of either zone is prohibited unless authorized by the Captain of the Port San Diego; Commanding Officer, Naval Base Point Loma; or Commander, Naval Region Southwest.

(3) Persons desiring to transit the area of the security zone may request permission from the Captain of the Port San Diego at telephone number (619) 278-7033 or on VHF channel 16 (156.8 MHz) or from either the Commanding Officer, Naval Base Point Loma or the Commanding Officer Navy Region Southwest by calling the Navy Port Operation Dispatch at telephone number (619) 556-1433 or on VHF-FM channels 16 or 12. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port San Diego or his or her designated representative.

(c) Definitions. For purposes of this section: Captain of the Port San Diego, means the Commanding Officer of the Coast Guard Sector San Diego; Commander, Navy Region Southwest, means Navy Region Commander responsible for the Southwest Region; Commanding Officer, Naval Base Point Loma, means the Installation Commander of the naval base located on Point Loma, San Diego, California; Designated Representative, means any U.S. Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port San Diego to assist in the enforcement of the security zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

3. Add §165.1103 to read as follows:

**§ 165.1103 Security Zone; Naval Mine Anti Submarine Warfare Command; San Diego Bay, San Diego, CA.**

(a) Location. (1) The following area is a security zone: The water adjacent to the Naval Mine Anti Submarine Warfare Command, bound by the following coordinates:

32°43'40.9" N, 117°12'54.9" W (A)

32°43'40.6" N, 117°12'52.3" W (B)

32°43'22.5" N, 117°12'57.8" W (C)

32°43'23.4" N, 117°13'01.3" W (D)

Thence running generally northwest along the shoreline to Point A.

(2) The proposed security zone at the Naval Mine Anti Submarine Warfare Command would be established to provide for the 100 feet of standoff distance.

(b) Regulations. (1) The general regulations governing security zones found in 33 CFR 165.33 apply to the security zone described in paragraph (a) of this section.

(2) Entry into, or remaining in, the areas of either zone is prohibited unless authorized by the Captain of the Port San Diego; Commanding Officer, Naval Mine Anti Submarine Warfare Command; or Commander, Naval Region Southwest.

(3) Persons desiring to transit the area of the security zone may request permission from the Captain of the Port San Diego at telephone number (619) 278-7033 or on VHF channel 16 (156.8 MHz) or from either the Commanding Officer, Naval Mine Anti Submarine Warfare Command or the Commander, Navy Region Southwest by calling the Navy Port Operation Dispatch at telephone number (619) 556-1433 or on VHF-FM channels 16 or 12. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port San Diego or his or her designated representative.



(c) Definitions. For purposes of this section: Captain of the Port San Diego, means the Commanding Officer of the Coast Guard Sector San Diego; Commander, Navy Region Southwest, means Navy Region Commander responsible for the Southwest Region; Commanding Officer, Naval Mine Anti Submarine Warfare Command, means the Installation Commander of the naval base located on Point Loma, San Diego, California; Designated Representative, means any U.S. Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port San Diego to assist in the enforcement of the security zone described in paragraph (a) of this section.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

Dated: October 30, 2013.

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S. M. Mahoney,  
Captain, U.S. Coast Guard,  
Captain of the Port San Diego.

[FR Doc. 2013-28035 Filed 11/29/2013 at 8:45 am; Publication  
Date: 12/02/2013]